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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,261	01/27/2004	Nancy L. Klodt	P06500us00	4141

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EXAMINER

BUI, LUAN KIM

ART UNIT PAPER NUMBER

3728

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/766,261	Applicant(s) KLODT, NANCY L.	
	Examiner Luan K Bui	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/27/04</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 9, the phrase "configured to form an enclosure" is confusion and indefinite because each of the top portion, bottom portion and middle portion as recited in the claims is not connected to each other. How is an enclosure formed by three separate portions? In claims 3 and 5-8, the phrase "the drink item is a drink box" or "supplies include at least one pencil holder" or "supplies further include a scissor holder" ... defines the an apparatus in reference to a drink item or school supplies which is undefined and has not been positively claimed rendering the claims vague and indefinite because it is not clear what structural limitations applicant intends to encompass with such language. In claim 2, the phrase "the top position" is incomplete and indefinite.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley et al. (6,349,820; hereinafter Kelley'820) in view of Maydwell et al. (5,595,302;

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hereinafter Maydwell'302) and Walker, Jr. (4,308,951). Kelley'820 discloses an apparatus (10g) for storing and transporting items comprising a top portion (14) having first and second opposite sides and a clip (48, 50) for holding a booklet/paper (44) having a write-on wipe-off surface, a middle portion (20) having first and second opposite sides and a bottom portion (12g) having first and second opposite sides and at least two compartments/restraints (Figures 8 and 9). The compartments/restraints of Kelley'820 are capable of holding a drink item and a snack item. Kelley'820 also discloses the other claimed limitations except for the middle portion comprises structures for holding school supplies such as pencil. Maydwell'302 shows a lunchbox (10) comprising a top portion (14) having structures (180, 184) for holding school supplies such as pencils and eraser (182, 186) and a bottom portion (12) having compartments (42, 48, 80, 90) with restraints (82, 100, 102) for holding meal, drink and others. Walker, Jr. suggests an apparatus a top portion (A) having first and second opposite sides, a middle portion (B) having first and second opposite sides and structures (48) for holding school supplies (45, 50) and a bottom portion (C) having a clip (42, 44) for holding paper (40) (Figure 1). It would have been obvious to one having ordinary skill in the art in view of Maydwell'302 and Walker, Jr. to modify the apparatus of Kelley'820 so the middle portion includes structures for holding school supplies such as pencils for writing on the booklet during use of the apparatus. The apparatus of Kelley'820 is capable of using as a lunchbox for school supplies and meal/snack. Claims 9 and 10 are drawn to the obvious method of using the apparatus of Kelley'820 as modified.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Woodnorth et al. (5,950,834; hereinafter

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Woodnorth'834). The apparatus of Kelley'820 as modified further fails to show the middle portion being a flap. Woodnorth'834 shows a lunch holder (10) comprising a bottom portion (14), a middle portion (32) is a flap and a top portion (12) is a lid in a closed position. It would have been obvious to one having ordinary skill in the art in view of Woodnorth'834 to modify the apparatus of Kelley'820 as modified so the middle portion is a flap for closing the bottom portion in a closed position for better protecting the items within the bottom portion.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Official Notice. The apparatus of Kelley'820 as modified further fails to show first and second back pack straps being connected to the bottom portion. Official Notice is taken of the old and conventional practice of providing a student's back pack for holding lunch and school supplies for student having straps for carrying the back pack. It would have been obvious to one having ordinary skill in the art in view of Official Notice to modify the apparatus of Kelley'820 as modified so it includes first and second straps attached to the bottom portion to facilitate carrying the apparatus.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648.. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb
November 14, 2004

A handwritten signature in black ink, appearing to read 'Luan K. Bui', with a long horizontal line extending to the right.

Luan K. Bui
Primary Examiner